COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION **CASE NO. PUE980814**

Ex Parte: In the matter of considering an electricity retail access pilot program- American Electric Power-Virginia

REPORT OF HOWARD P. ANDERSON, JR.

HEARING EXAMINER

March 10, 2000

HISTORY OF THE CASE

On March 20, 1998, the Commission established an investigation to examine the restructuring of the electric utility industry in Virginia.[1] As a part of this investigation, the Commission directed American Electric Power-Virginia ("AEP-VA" or "Company") to investigate and propose a retail access pilot program. On November 2, 1998, AEP-VA filed its proposed customer choice pilot program ("Pilot Program").[2] On December 3, 1998, the Commission entered an order establishing this case, setting a procedural schedule, and scheduling the matter for hearing on June 22, 1999. By Hearing Examiner's Ruling of June 8, 1999, Commission Staff's Motion for Extension of Time and Continuance was granted, a revised procedural schedule established, and the hearing set for November 9, 1999. The Company withdrew its original application and on September 1, 1999, filed its current customer choice Pilot Program.

Counsel appearing at the hearing on November 9, 1999, were M. Renae Carter and William Chambliss for the Commission; Anthony Gambardella and James R. Bacha for AEP-VA; Kodwo Ghartey-Tagoe and Karen L. Bell for Virginia Electric and Power Company ("Virginia Power"); Edward L. Petrini for the Old Dominion Committee for Fair Utility Rates ("ODC"); John F. Dudley for the Office of the Attorney General ("Consumer Counsel"); Marleen L. Brooks for The Potomac Edison Company, d/b/a Allegheny Power ("Potomac Edison"); and Robert Omberg and John Pirko for the Virginia Electric Cooperatives. Michel A. King appeared *pro se*. Proof of service was marked as Exhibit A and made a part of the record. Briefs were filed on December 22, 1999. A transcript of the proceedings is filed with this Report.

---

[1] *Commonwealth of Virginia at the relation of the State Corporation Commission, Ex Parte: In the matter of requiring reports and actions related to independent system operators, regional power exchanges and retail access pilot programs,* Order Establishing Investigation, Case No. PUE980138, 1998 S.C.C. Ann. Rep. 402.
[2] Ex. No. BLT-2.

POSITION OF THE PARTIES

AEP-VA proposes to implement its retail access Pilot Program to allow a limited number of customers to seek an alternative supplier of electricity. AEP-VA considers its proposed Pilot Program a prelude to the transition to full competition. Phase I begins with 2% of the Company's Virginia jurisdictional load (50 MW). Phase II would expand participation up to 10% of the Company's Virginia load (250 MW) by March 1, 2001. By this time, the Company expects sufficient infrastructure and information systems to be in place to accommodate such an expansion. The Company proposes participation by all customer classes throughout the entire AEP-VA service territory. The Company's proposal includes a component for pre-aggregated loads to assist participation by smaller customers.

Staff and the parties support implementation of the Company's Pilot Program, however, there are areas of disagreement. The primary areas of contention include: (1) size and timing of the Pilot Program, (2) methodology for determining market price, (3) terms and conditions of Pilot Program service, (4) reporting requirements, and (5) wires charges. Staff's proposal results in wires charges that are less than zero (that is, "negative"); this issue is the most contentious.

Staff advocates increasing the size of Phase I of the Pilot Program to 5% of the Company's Virginia jurisdictional customers. Staff basically agrees with the Company's approach of using recent historical wholesale data to determine a projected market price. However, Staff proposes to use a five-hub methodology in the market price calculation instead of the Company's use of only "into" Cinergy[3] trading hub data. In addition to disallowing transmission costs, Staff seeks clarification whether the $5.00 switching fee advocated by the Company for customers who switch competitive suppliers would violate the rate cap provisions of the Virginia Electric Utility Restructuring Act, §§ 56-576 to 56-595 of the Code of Virginia ("the Act").[4] Staff further proposes that the Company report market share information of participating suppliers and, where available, provide a comparison of market offers made by participating suppliers. Finally, Staff advocates a negative wires charge in order to comply with the statutory requirements of Section 56-583 A of the Code of Virginia. Incumbent electric utilities are allowed to recover their stranded costs by means of a wires charge assessed against customers who opt to receive service from a competitive service provider ("CSP").[5] Staff proposes a negative wires charge because, by their calculations, projected market prices will exceed capped generation rates which is not permitted under § 56-583 of the Code of Virginia.

The Company objects to Staff's proposal for a negative wires charge. The Company argues that the wires charge, to the extent it exceeds zero, is intended only for the incumbent utility to collect its stranded costs. Further, the Company contends that Staff's proposal to credit a negative wires charge against the Company's distribution revenues would result in cost shifting between generation and distribution in violation of Section 56-590 C of the Code of Virginia. The Company objects to Staff's calculation of market price projection because it contends it will

[3]The term "into" designates the physical delivery location of power traded at a wholesale trading hub. Ex. No. HMS-10, at 30 n.10.
[4]Staff Brief at 28.
[5]The incumbent electric utility is to recover its stranded costs from customers who remain on the system through capped rates.

greatly overstate the price at which the Company will actually sell its incremental generation in the market.

Consumer Counsel observes that, if the wholesale market price is already higher than AEP's unbundled generation rate, no one would leave the incumbent system. Consumer Counsel notes that market prices can and do change. He further states that it is necessary to establish a framework for customers who may decide to leave the system. Consumer Counsel advocates allocating class participation based on what they consider an equitable percentage of the kilowatt-hour usage of each class, wholesale and retail costs incurred by the CSP, and using the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") market energy and capacity prices to determine the wholesale component of the projected market price. Consumer Counsel contends that Phase I of the Pilot Program should include 5% of the annual kilowatt-hour sales for each class, plus another 2% as a set-aside for aggregation. Consumer Counsel witness Norwood advocates the use of retail market prices instead of wholesale prices.[6] Finally, Consumer Counsel maintains that Phase II of the Pilot Program should start in January of 2001.

Counsel for ODC advocates an increase in the size of the Pilot Program, accelerating the expansion of the Pilot Program, and increasing maximum load for an individual large power service customer. Specifically, ODC argues that Phase I should be expanded to allow at least 5% of AEP-VA's overall customer load to participate; Phase II should start on January 1, 2001; and participating individual LPS customer load limits should be increased to 30 MW. ODC witness Al-Jabir proposes to incorporate a capacity premium into the calculation of market price.[7] Finally, ODC agrees with the Company's proposal to permit self-supply of all ancillary services permitted under FERC tariffs. However, ODC maintains that AEP-VA must be required to deduct the costs associated with those services from the wires charge for each customer class.

Counsel for Virginia Power urges the Commission to reject the market price projection methodologies proposed by ODC and the Consumer Counsel, arguing they would artificially inflate market prices and therefore send improper economic signals. Virginia Power also urges rejection of Staff's proposal for a negative wires charge.[8]

Protestant Michel A. King of 103 Shale Place, Charlottesville, Virginia, made the following requests:

(1) The Commission should reject the Company's proposal for special distribution charges, distribution surcharges, or prepayments of otherwise amortizable distribution charges for prospective Pilot Program participants at locations served by special distribution facilities;

(2) The Commission should reject the Company's proposal to require interval meters for all Pilot Program customers with average monthly billing demands of 200 kW or greater; and

[6]Ex. No. DSN-7, at 28-31.
[7]Ex. No. AJJ-14, at 11.
[8]Tr. 25.

(3) The Commission should order the Company to use language throughout its Pilot Program that accurately reflects the Company's liability with respect to equipment that the Company does not own, install or maintain.[9]

Finally, Mr. King supports Staff's proposal for a negative wires charge.

Counsel for Potomac Edison limited her participation in this proceeding to express Allegheny Power's concern over Staff's proposal for a negative wires charge.

Counsel for the Virginia Electric Cooperatives (specifically Old Dominion Electric Cooperative and the Virginia-Maryland-Delaware Association of Electric Cooperatives) attended, but did not participate in the proceedings in an effort to observe and learn as their members contemplate undertaking Pilot Programs of their own.[10]

DISCUSSION

Pilot Program Size and Timing

The Company proposes a phased Pilot Program beginning with a customer participation level of approximately 2% of its Virginia jurisdictional load, commencing on or about June 2000. The second phase of the Pilot Program would increase customer participation to approximately 10% of the Company's Virginia jurisdictional load by March 2001. Customer participation, as proposed by the Company, would total approximately 3,200 and 16,000 customers in Phases I and II, respectively. There are no proposed geographical restrictions for either phase of the Pilot Program, therefore customers throughout the Company's service territory would be eligible to participate. The Company maintains that, by starting its Pilot Program with only 2% of its jurisdictional load, it will be able to gain experience with the new information technology ("IT") systems necessary for a competitive market. The Company further states it will have an infrastructure capable of processing large volume transactions by March 1, 2001, for the second phase of its Pilot Program.

Staff argues that a successful Pilot Program for electric retail access must offer a CSP sufficient customers to achieve a profit. Staff believes that a Pilot Program with only 3,200 customers spread across a wide geographic area will result in little or no participation; therefore, Staff proposes increasing Phase I of the Pilot Program to 5% or approximately 8,000 customers. Staff witness Spinner testified that increasing the size of the Pilot Program is crucial to its success.[11]

Likewise, the ODC proposes expansion of the initial phase of the Pilot Program to at least 5% of the Company's load. ODC witness Al-Jabir testified that, to provide a meaningful learning experience, the Pilot Program must be of sufficient size to simulate market conditions that will be experienced when full retail access is implemented. Mr. Al-Jabir further explained

[9] King Brief at 9.
[10] Tr. 32.
[11] Ex. No. HMS-10, at 14.

that CSPs incur significant up-front costs to penetrate a new market, particularly a market completely dominated by an incumbent supplier. These costs include market research, advertising, development of service offerings, and contract negotiation. If CSPs do not believe they can spread these up-front costs over a sufficient volume of sales under the Pilot Program, they simply will forego participation.[12]

Company witness Laine contends that, if the Company is ordered to implement Phase I at a 5% participation level prior to the IT infrastructure being in place, it is likely that expenditures for short-term interim solutions containing "throw away" components would be necessary. [13] However, Mr. Laine was unable to state the pilot level at which "throw away" systems could be avoided.[14] In fact, Mr. Laine could not guarantee that "throw away" systems could be avoided if Phase I of the Pilot Program remained at 2% customer participation.[15] Mr. Laine testified that the most cost-effective long-term solution would be to utilize components from AEP's system-wide information system.[16]

I find the initial phase of the Pilot Program should be composed of up to 5% of the Company's Virginia jurisdictional load. While any Pilot Program must be small enough in size to reasonably manage technical, mechanical, and physical problems related to electronic data interchange and actual flow of generation supply, a Pilot Program for electric retail access must involve sufficient potential shoppers to attract a CSP to the pilot marketplace.

Requiring AEP-VA to increase participation in Phase I to 5% of its Virginia jurisdictional load should not present a significant technical hardship for the Company. Company witness Laine testified that the entire state of Ohio is opening its retail electric market to full competition on January 1, 2001.[17] Mr. Laine explained that, while not all of AEP's 1.3 million Ohio customers are expected to choose an alternative supplier on January 1, 2001, the Company is trying to develop an infrastructure that will provide the capability to deal with a very significant number of potential participants.[18] This IT infrastructure will serve AEP's Virginia customers as well. Increasing Phase I of the Pilot Program will potentially involve approximately 8,000 customers and 125 MW of load. Compared to the Company's undertaking in Ohio, this Pilot Program should not constitute a significant challenge. Further, increasing the size of the pilot allows competitive suppliers to spread customer acquisition costs over a larger sales base. Finally, it is important to note that, unlike the proposed Virginia Power Pilot Program which is confined to a compact geographic area, the AEP-VA Pilot Program is geographically spread across the Company's entire service area in Virginia. This geographic spread will make it more difficult for CSPs to be profitable. Therefore, it is important to increase the size of the Pilot Program to attract potential CSPs to the AEP-VA service area.

---

[12]Ex. No. AAJ-14, at 4, 5.
[13]Ex. No. JLL-19, at 4.
[14]Tr. 364.
[15]Tr. 362.
[16]Tr. 362.
[17]Tr. 364.
[18]Tr. 377, 380.

Commencement of Phase II

The ODC and Consumer Counsel further propose to accelerate the implementation of Phase II of the Company's Pilot Program to no later than January 1, 2001. ODC witness Al-Jabir points out that the Company's proposed starting date for Phase 2 of March 1, 2001, would leave only ten months for expanded customer participation prior to the end of the Pilot Program. Consumer Counsel points out that AEP's Ohio customers will begin retail competition on January 1, 2001, and that Virginia retail competition will begin January 1, 2002. Therefore the Company should have no problem beginning Phase II of its Pilot Program on January 1, 2001.[19]

Company witness Laine explains that the Company specifically wished to avoid January 1, 2001 and selected March of 2001 for the implementation of Phase II of the Pilot Program for three reasons. First, if Phase II started on January 1, CSP's recruitment of shoppers would take place primarily during the holiday season between Thanksgiving and the end of the year. Second, January 1 is the start of the peak heating season, a period when market prices are likely to be at their highest and thus less likely to attract customers. Third, the state of Ohio is opening its retail market on January 1, 2001. As part of the AEP system, AEP-VA will be sharing in the IT infrastructure involved in the Ohio transition to a competitive marketplace. Mr. Laine states that waiting until March should provide sufficient time to assure that "bugs" have been worked out of the system.[20]

I find Phase II of the Pilot Program should start on or about March 1, 2001, for two reasons. First, AEP will open its entire Ohio market to retail competition on January 1, 2001. Commencing Phase II of the Pilot Program concurrently could certainly place a strain on AEP personnel and IT infrastructure. I concur with Company witness Laine that a three-month delay in the implementation of Phase II of the Virginia Pilot Program should allow time for the IT infrastructure to be operating smoothly. Second, by delaying the start of Phase II of the Pilot Program until after the Ohio commencement of retail competition, the Company should be able to minimize the number of "throw away" systems it will need to serve its Virginia customers. Thus, the Company's jurisdictional cost of serving its Virginia customers should be lower.

Re-allocation Among Customer Classes

Consumer Counsel witness Norwood proposes expanding the size of Phase I of the Pilot Program to 5% of the annual kilowatt-hour sales of each rate class plus an additional 2% of the annual sales for the residential and small commercial classes as a minimum set aside for aggregated loads. Mr. Norwood argues that aggregation provides the best opportunity for small customers to access the market during the pilot and that an increased level of pre-aggregated loads is needed to better attract aggregators and to gain experience in this important area.

Company witness Thomas responds by explaining that Mr. Norwood's redistribution among the classes results in a disproportionate level of participation for the smallest customers. Ms. Thomas states that using an energy basis instead of a demand basis, coupled with a

---

[19]Consumer Counsel Brief at 25.
[20]Ex. No. JLL-19, at 5, 6.

redistribution among the customer groups would significantly increase the total number of customers participating in the pilot. Ms. Thomas estimates the representation of small customers eligible to participate in the Pilot Program would increase from approximately 97% of total Pilot Program participation under the Company's proposal to approximately 99% under Mr. Norwood's proposal.[21]

If the Commission expands the size of the Pilot Program, ODC witness Al-Jabir recommends that customer class participation levels should expand proportionately, based on the Company's proposed allocation of Pilot Program load for the classes. Specifically, Mr. Al-Jabir recommends that the Commission should not reduce the Company's allocation of eligibility to the Large Power Service ("LPS") class as proposed by Mr. Norwood.[22]

Mr. Al-Jabir further proposes that the Company's participation limit of 15 MW for any individual LPS customer be increased to 30 MW. Mr. Al-Jabir maintains that, if the Pilot Program is expanded to 175 MW of load for the LPS class, as the Company now proposes, a customer participation limit of 30 MW would permit at least five LPS customers to participate in the program at the maximum load level.[23]

I find that Mr. Al-Jabir's proposal to increase the limit of participation to 30 MW should be denied because it would provide an undue advantage to a few large customers while denying others the opportunity to participate in the Pilot Program. In fact, Mr. Al-Jabir's proposal to increase individual load limits has the potential to restrict severely the number of LPS participants.[24] Further, the 30 MW individual customer limitation is unreasonable given the size of the various customers in the LPS-TOD class. The average demand of an LPS-TOD customer is approximately 3 MW. While the LPS-TOD class is comprised of approximately 300 customers, only 10 customers have energy demands which exceed 15 MW.

I find that Mr. Norwood's proposal to base participation levels on annual kWh sales and his proposal for an additional 2% set-aside for aggregated loads should be denied. Both proposals would unduly increase the participation levels of residential and other small customers. The Company's approach balances customer participation based on energy, demand, and number of customers. Further, the Company's Pilot Plan proposal has a set-aside for aggregated loads. I find the Company's methodology used to determine customer participation levels should be adopted because it balances each factor in an effort to provide equitable participation levels for customers of all sizes and classes.

In summary, I recommend that Phase I of the AEP-VA Pilot Program should include at least 5% of the Company's Virginia jurisdictional load. I find that Phase II of the Pilot Program should commence on or about March 1, 2001, and offer participation levels of up to 10% of its Virginia jurisdictional load, as proposed by the Company. The Company should offer equal

---

[21]Ex. No. LJT-18, at 2.
[22]Tr. 204.
[23]Ex. No. AAJ-14, at 8.
[24]With a Phase 1 allocation of 35 MW to the LPS-TOD class, Mr. Al-Jabir's proposal could limit participation to only two customers (under the Company's proposed 2% participation level for Phase I). In Phase II, his proposal could limit participation to only six customers. Under the Company's proposed limit of 15 MW for any customer, participation would be available to at least three customers in Phase I and to at least 10 customers in Phase II.

proportions of load for pilot participation in each participating rate class. Finally, the participation limit for individual LPS-TOD customers should remain as originally proposed by the Company at no more than 15 MW for any participating LPS-TOD customer.

Projected Market Price of Generation

Section 56-583 of the Code of Virginia authorizes the Commission to determine "projected market prices for generation."[25] The projected market price for generation determined by the Commission is the "shopping credit" customers will use to decide whether to select a new supplier or remain with the incumbent. The projected market price for generation is also the "price to beat" for a CSP to capture market share and penetrate a market currently controlled by the incumbent. Staff and the Company developed their market prices using data from historical, wholesale, and spot market energy prices.[26]

Consumer Counsel witness Norwood proposes that projected market prices reflect the projected wholesale market price plus retail-related costs of the CSP.[27] These costs include marketing and advertising to retail customers, salaries and other general administrative costs, proposal development costs, wholesale power contract negotiations and administration costs, risk management costs, transmission costs and losses, and a reasonable profit. As a proxy for these costs, Mr. Norwood recommends a conservative retail market adder of 0.5 cents/kWh be used to develop projected market prices.[28] Mr. Norwood does not propose deducting transmission costs in arriving at a market price. In summary, Consumer Counsel requests that the projected market price reflect the projected wholesale market price, plus an adder (5 mils) for retail-related costs to serve Virginia customers, without deducting transmission costs and losses.

For the wholesale component of the projected market price, Consumer Counsel proposes the Commission use PJM Interconnection market energy and capacity prices. Consumer Counsel argues that, unlike the Company's use of "into" Cinergy, PJM market prices are published by PJM and are more readily available. In contrast, Consumer Counsel points out that "into" Cinergy prices come from two sources. Further, Consumer Counsel notes that historical PJM market prices are available on an hourly basis, while "into" Cinergy prices only provide the average daily price for the 16-hour on-peak period and the average daily price for off-peak periods.[29] Next, Consumer Counsel states that, unlike "into" Cinergy, PJM publishes market capacity prices, as well as energy prices. Projected market prices, argues Consumer Counsel, should incorporate a capacity component because AEP's generation costs include both energy and capacity components.[30]

[25]The Restructuring Act does not define the term "projected market prices for generation," providing only that they are to be "determined by the Commission" in the process of calculating wires charges. Va. Code § 56-583 A.
[26]Ex. No. BXT-5, at 2; Ex. No. HMS-10, at 29-43.
[27]Ex. No. DSN-7, at 29.
[28]Ex. No. DSN-7, at 47.
[29]Ex. No. DSN-7, at 37, 38.
[30]Id. at 39.

Finally, Consumer Counsel maintains that the historical PJM market prices should be adjusted for future price changes during the period in which the pilot rates will be in effect.[31] The adjustments would be derived by multiplying the historical price for each customer class by a "futures adjustor." The futures adjustment factor would be determined by dividing the load-weighted average NYMEX[32] futures price for the period in which the pilot will be in effect, by the load-weighted average NYMEX futures price for PJM for the twelve-month historical period.[33] In conclusion, Consumer Counsel proposes limiting the futures adjustment factor to plus or minus 10% for the Pilot Program.[34]

Company witness Tierney disagrees with Consumer Counsel's proposal to use PJM hourly market prices and capacity charges with the energy price adjusted by a NYMEX future price adjuster index for several reasons. First, the PJM hub would be subject to the same transmission constraints discussed below. This would especially be true since AEP has no direct interconnect with PJM. Second, Mr. Tierney considers the use of a "futures adjustor" inappropriate. The use of forward looking prices is problematic for purposes of the Pilot Program due to their continually changing nature and the arbitrary point in time at which the values would be selected. Third, Mr. Tierney points out that Mr. Norwood failed to recognize incremental transmission charges involved to deliver the energy to PJM.[35]

ODC argues that the Commission should reject the use of unadjusted historic prices[36] for the calculation of "projected" market prices because Section 56-584 of the Code of Virginia clearly calls for the Commission to determine projected market prices of generation. Further, ODC witness Al-Jabir contends that the Company's market price calculation methodology does not appropriately reflect the costs of selling electricity at the retail level because the Company's market prices are based on daily spot wholesale transactions. According to Mr. Al-Jabir, it is unlikely that retail customers would rely solely on daily spot markets to buy electricity because these markets are especially volatile, as demonstrated by the past two summer seasons.[37]

Further, Mr. Al-Jabir maintains that daily spot wholesale prices do not explicitly include generation capacity costs or other costs related to marketing electricity at retail. Mr. Al-Jabir asserts that ignoring these costs understates market prices. Mr. Al-Jabir also contends that competitive market prices should be set at a level that can sustain new generation capacity additions, i.e., at long-run marginal cost.[38] To this end, Mr. Al-Jabir uses the characteristics of a combined cycle gas turbine as an estimate for long-run marginal costs. In conclusion, ODC argues that the Commission should adopt Mr. Al-Jabir's approach because it projects market prices for generation, takes into account the Virginia retail market, and avoids the volatility and lack of predictive accuracy of relying exclusively on spot, historical, wholesale markets, as proposed by the Company and Commission Staff.

---

[31] Id. at 45, 46.
[32] New York Mercantile Exchange.
[33] Id. at 46, Schedule 8.
[34] Id. at 46.
[35] Ex. No. BXT-16, at 4.
[36] AEP-VA and the Commission Staff call for the calculation of historic, spot market prices, not projected market prices for generation.
[37] Ex. No. AAJ-14, at 10.
[38] Id. at 11.

Company witness Tierney disagrees with Mr. Al-Jabir's approach of using long-run marginal costs to determine market prices for generation cost. First, he states that use of long-term marginal costs is not reasonable for a short-term Pilot Program. Second, he contends it is better to use actual market prices as a proxy for forecast prices rather than a theoretical expectation of what prices should be on a marginal cost basis. The use of historical market prices is comparatively simple and eliminates the need for a large number of assumptions.[39]

I find the methodology using historical spot market prices should be adopted. The approach is simple, straightforward and eliminates the need for a large number of assumptions. This calculation should be updated with the latest information 90 days prior to implementation.

As Staff witness Spinner points out, it is almost certain that any market price projection will miss the actual price observed during the forecast period. As noted above, the markets are in a near constant state of flux. The important question is how far off the projections will be and in whose favor the deviations will be. If the projection turns out to be too low and wires charges are set too high, it will reduce the number of participants in the Pilot Program. In the alternative, if the projection turns out to be too high and wires charges are set too low, the level of Pilot Program participants should increase.

Mr. Norwood's approach, which adds margins representing costs incurred by a CSP, would send artificial signals and create unrealistic expectations for full retail access. It is also unfair to customers who are not participating in the Pilot Program and thus would not receive these artificial savings.

Mr. Al-Jabir's methodology of projecting long-term market prices is contrary to Section 56-583 of the Act which allows for a year-by-year comparison of an incumbent electric utility's unbundled, embedded generation cost and a projected market price for generation in determining wires charges. Further, the Pilot Program is short in duration. Therefore, it is only practical to utilize a short-term approach as employed by the Company and Staff.

Transmission Costs in Determining Market Price

Company witness Tierney states that, because the Company would incur transmission costs to move its power to the Cinergy hub, or any other point of sale, the appropriate market price of power would be the delivered price to the hub minus the transmission wheeling costs.[40] Therefore, Company argues that estimated generation revenue expected to be realized by the Company from power sales should be reduced by the appropriate amount of transmission costs.[41]

Staff assumes that transmission costs would be accounted for in the prices at which AEP sold or purchased power off-system. Thus, there is no need to account separately for transmission costs in performing the market price calculation.[42]

[39]Ex. No. BXT-16, at 5.
[40]Id. at 4.
[41]Ex. LJT-18, at 9, 10; Tr. 312, 313, 343-345.
[42]Staff Brief at 10.

Hearing Examiner Skirpan, in his Report of November 30, 1999, found that the language of Section 56-583 A provides only for the "projected market prices for generation." Mr. Skirpan went on to find that such prices

> should reflect only the prices found at the relative interconnects, without regard to transmission and ancillary costs for either Virginia Power or competitive service providers. Eliminating transmission and ancillary cost considerations from the projection of market prices for generation is consistent with the "for generation" language of the statute, and should provide opportunities for both recovery of net stranded costs and competition.[43]

I concur. Section 56-583 A of the Code of Virginia provides only for the projected market price for generation. I find the projected market price should reflect the price found at the hubs. Therefore, the Company's proposal to treat transmission cost as a separate ancillary cost should be denied.[44]

Treatment of Transmission Shortfalls

The Company proposes to recover the difference between the AEP OATT transmission rates and the transmission costs embedded in AEP-VA retail rates as a component of residential generation rates. Company witness Bethel explains that recent changes ordered by the FERC, if sustained, would result in a significant reduction in the rates for transmission service under the OATT.[45] Company witness Thomas testified that this difference, however, results from a cost differential between the AEP system and AEP-VA, and is not a result of inadequate federal ratemaking as suggested by Consumer Counsel.[46]

Consumer Counsel objects to the Company's proposal to assess this difference against Virginia jurisdictional customers. Specifically, Consumer Counsel opposes the inclusion of jurisdictional transmission rate differences as an adder to unbundled generation revenues. This, according to Consumer Counsel, would artificially increase the unbundled generation revenue for the residential class, resulting in an increased wires charge. Moreover, Consumer Counsel objects to what it considers is the cost shifting of transmission costs into generation rates.

[43] *Ex Parte*: *In the matter of considering an electricity retail access pilot program – Virginia Electric and Power Company*, Case No. PUE980813, Report of Alexander F. Skirpan, Jr., at 20, 21 (November 30, 1999).
[44] Senate Bill No. 585, passed by the General Assembly in its current session, would allow these transmission costs to be recovered by the Company. This bill has not, as of the date of this Report, been signed by the Governor.
[45] Ex. No. DWB-4, at 3.
[46] Ex. No. LJT-18, at 6.

While Staff takes no position on whether this treatment of transmission rate shortfalls as a transition cost is appropriate, the Staff urges these costs be treated the same in the Pilot Programs of both AEP-VA and Virginia Power.[47]

Unbundled transmission rates are subject to FERC regulation and must follow the FERC OATT. I find the Company's proposal to treat the difference between the Virginia jurisdictional transmission rate and the FERC OATT as a transition cost, which would be a part of the wires charge, should be denied. Shortfalls between the FERC OATT and the Company's cost of service should not be treated as transition costs. Further, this shortfall should not be charged against the generation component of rates for two reasons. First, this charge would constitute a cross-subsidization or cost shifting by moving a transmission cost into generation rates. Second, if the transmission shortfall is shifted into generation rates, the cost would be inappropriately reflected in the wires charge.

Treatment of Ancillary Services

As noted above, the FERC has asserted jurisdiction over unbundled transmission and ancillary services provided pursuant to a retail Pilot Program, specifying that such services must be provided under a utility's FERC-approved OATT. Under this FERC policy, any of AEP-VA's retail customers who directly access the competitive market will pay for unbundled transmission and ancillary services under AEP's OATT, once retail customer choice is introduced on a system-wide basis. Certain ancillary services, such as scheduling, system control and dispatch service, and reactive supply and voltage control service, must be supplied by AEP-VA because these services remain natural monopolies. However, other ancillary services, such as regulation and frequency response, energy imbalances, and operating reserves, can be supplied by generation providers other than AEP-VA. The Pilot Program allows participants to self-supply all ancillary services that can be competitively supplied under AEP's OATT.

ODC witness Al-Jabir claims the Company did not deduct the costs of all six ancillary services from its unbundled Pilot Program rates. Instead, he argues the Company deducted only the costs associated with the two ancillary services that customers are required to purchase from AEP. The result, to the extent customers pay wires charges, is that customers will pay twice for the cost of the remaining four ancillary services. This occurs, Mr. Al-Jabir alleges, because the cost of these four services remains embedded in the wires charge of Pilot Program participants.[48]

[47]Examiner Skirpan, in the Virginia Power Pilot Program case found that this difference in transmission costs should not be treated as a transition cost because, when full retail competition occurs, customers will buy transmission according to the FERC OATT. Additionally, Mr. Skirpan found these differences are not temporary differences that will eventually go away after a period of full retail access. Ex Parte: *In the matter of considering an electricity retail access pilot program – Virginia Electric and Power Company*, Case No. PUE980813, Report of Alexander F. Skirpan, Jr., Hearing Examiner at 20, 21 (November 30, 1999).
[48]Ex. No. AAJ-14, at 16.

Company witness Bethel prepared estimates of the revenue associated with Virginia retail customers' usage of ancillary services. Mr. Bethel includes the two mandatory ancillary services[49] in his estimate because, he states, these are the only two ancillary services that AEP can depend on customers to purchase under the OATT. Mr. Bethel points out that AEP-VA no longer proposes, as it did in the November 1998 filing, that Pilot Program participants be required to purchase additional ancillary services from AEP.[50]

Company witness Thomas explains:

> The capped generation component for each customer class was determined using a revenue requirement computed as the current bundled revenue requirement less the following: (i) distribution- and customer-related revenue requirement, and (ii) estimated revenue under the FERC OATT, including ancillary services required to be purchased from the Company. [51]

Therefore, it appears from the Company's testimony that the competitive ancillary services have been deleted from the Company's calculation of its wires charge. However, there is insufficient evidence in the record to determine if the Company has, in fact, removed these competitive ancillary costs from its wires charge calculations. Therefore, I find that, if the costs associated with the competitive ancillary services have not already been deducted from its wires charge calculation, the Company should delete them.

Market Hubs

Staff believes that the recovery of just and reasonable stranded costs is best accomplished by using the wholesale price the incumbent utility can achieve from selling power off-system that it would otherwise have had to supply to its regulated customers. Staff and the Company disagree, however, on the delivery points to be used in determining the wholesale market price. The Company produced market price results using "into" Cinergy data for the period September 1998 through August 1999. Instead of restricting market price information to data from the "into" Cinergy hub, Staff's analysis includes data from four other Midwestern hubs[52] that directly interconnect with the AEP transmission system.

Staff contends that the use of a single trading hub is inconsistent with the Company's sophisticated and extensive participation in bulk power markets. Staff witness Spinner testified that, during the historical period set forth by the Company, there were several days when electric power prices in other markets in which the Company participates exceeded "into" Cinergy prices. Thus, in focusing exclusively on "into" Cinergy, the Company's methodology does not allow for the possibility that the Company may have sold the displaced power elsewhere for the highest possible value. Mr. Spinner concludes that from a stranded cost mitigation perspective,

[49]Under OATT Schedule 1: Scheduling, System Control and Dispatch Service. Under OATT Schedule 2: Reactive Supply and Voltage Control from Generation Sources Service.
[50]Ex. No. DWB-4, at 6, 7.
[51]Ex. No. LJT-6, at 4, 5.
[52]The additional hubs are "into" ComEd, "into" ECAR Northern, "into" MAIN Southern, and "into" TVA.

the Commission should assume AEP will skillfully dispose of the displaced power in a value-maximizing manner.[53]

Specifically, the Company uses the historical “into” Cinergy Index for on-peak delivery of energy, as published in Power Markets Week, and the historical “into” Cinergy Index for off-peak deliveries, as published by Bloomberg.[54] Company witness Tierney[55] testified that these indices: (1) are representative of the market in which the AEP System buys and sells power; (2) represent a market commonly traded by most market participants in the Midwest power market; and (3) are independently published and recognized as an industry standard.[56] The Company argues Staff's methodology assumes that AEP could sell all of the generation it had available for sale at the maximum hub price on every day. Such an analysis is unrealistic, with an extreme upward bias as a result.[57]

Mr. Tierney further testified that he does not recognize the five trading hubs used by Staff as hubs. Although Mr. Tierney admits he has sold power at ECAR Northern and MAIN Southern, he does not recognize these trading areas as hubs.[58]

Mr. Tierney admits that AEP uses the TVA hub and the ComEd hub, which are major Midwest hubs. On the East Coast, AEP does trade out of the PJM hub (primarily Western PJM), although this hub would require a wheel from the AEP system. AEP also trades “into” Entergy and “into” Enron, however there are often transmission constraints in this area.[59] Mr. Tierney points out that often prices are driven up due to transmission constraints. Therefore, if AEP cannot deliver the power, it cannot achieve the high market price.[60] In summary, Mr. Tierney states that the Company might sell to any given hub on any given day subject to transmission limitations.[61]

As noted, Mr. Tierney disagrees with Staff’s approach because it assumes that AEP could sell all of its incremental generation at the maximum on-peak hub price each day. To the contrary, Mr. Tierney states that the Company will never be able to predict which hub will offer the highest price in the day-ahead market. Second, it would be difficult for AEP to execute or sell all of its incremental generation at that price. Third, the transmission constraints that Mr. Spinner concedes are absent from his methodology are crucial. One reason that a particular hub will trade at a premium relative to other hubs is that transmission constraints into that hub may make it risky, if not impossible, to deliver outside generation into that hub.[62] Mr. Tierney states

[53] Ex. No. HMS-10, at 38, 39.
[54] Ex. No. BXT-5, at 2.
[55] Mr. Tierney is Director of Energy Trading Operations for AEP and is responsible for the operations of the short-term trading desk. This desk is responsible for buying energy in the spot market to meet AEP’s commitments, selling AEP’s excess generation in the short-term and properly administering AEP’s wholesale power contracts in real time. Mr. Tierney is also responsible for scheduling operations of AEP’s wholesale power transactions. (Ex. BXT-5, at 1, 2).
[56] Ex. No. BXT-5, at 2, 3; Tr. 48-50, 298-300.
[57] Company Brief at 11.
[58] Tr. 282, 302.
[59] Tr. 271.
[60] Tr. 270, 271.
[61] Tr. 288, 289.
[62] Ex. No. BXT-16, at 2.

that on several days during the summer of 1999, when prices at the major hubs were at their highest, transmission constraints made it impossible to move additional power to the highest priced hubs. Therefore, Mr. Tierney argues that Staff's failure to factor in the effect of transmission constraints is significant, because these breakdowns will often occur on the highest price days with the highest price differentials at the hubs. As a result, Mr. Tierney concludes that Staff's methodology creates an unrealistic upward skew in expected market prices.[63]

The following table shows market price results using the Company's original proposal, updated "into" Cinergy data, and Staff's five-hub method.

Customer Class	**Capped Generation AEP-VA Sept. 1, 1999**	**Market Price As filed by AEP-VA Sept. 1, 1999**	**Market Price Staff's Update Cinergy only**	**Market Price Staff's Update Five – Hub**
RS	2.973	2.989	4.094	4.834
SGS	3.453	3.121	4.326	5.125
MGS	3.957	3.913	5.639	6.793
LGS	3.152	2.982	4.081	4.807
LPS	2.914	2.747	3.668	4.371
SWS	1.801	3.049	4.231	5.020
OLS	1.627	1.896	2.147	2.327

I find that the hubs to be considered in determining market price should be Cinergy and TVA. AEP has direct transmission access to these hubs and Company witness Teirney admits that AEP trades through TVA as well as Cinergy. Cinergy and TVA are two of the five hubs used by Staff in its analysis. Staff's five-hub approach has merit because AEP is geographically positioned and has the expertise to be a dominant national force in the emerging competitive energy market. Staff's approach, however, does not take into account transmission constraints and the fact that AEP will not always achieve the maximum on-peak price for its incremental power. The two-hub approach takes these factors into consideration. It should be noted, however, that even with this two-hub approach, which takes into consideration every objection to Staff's analysis raised by AEP, the result is a negative wires charge for all customer classes as set forth below:

Customer Class	**Cin/TVA Market Price Staff's Update Two-Hub**	**Resulting Wires Charge Two-Hub**	**Market Price Staff's Update Cinergy only**	**Resulting Wires Charge Cinergy only**	**Market Price Staff's Update Five – Hub**	**Resulting Wires Charge Five – Hub**
RS	**4.2111**	**-1.2381**	4.094	-1.121	4.834	-1.861
SGS	**4.4566**	**-1.0036**	4.326	-0.873	5.125	-1.672
MGS	**5.8322**	**-1.8752**	5.639	-1.682	6.793	-2.836
LGS	**4.2034**	**-1.0514**	4.081	-0.929	4.807	-1.655
LPS	**3.8495**	**-0.9355**	3.668	-0.754	4.371	-1.457
SWS	**4.3517**	**-2.5507**	4.231	-2.430	5.020	-3.219
OLS	**2.1824**	**-0.5554**	2.147	-0.520	2.327	-0.700

[63] Id. at 3.

Wires Charge

The General Assembly devised two methods for an incumbent electric utility to recover its stranded costs: (1) recovery through capped rates for customers that remain with the incumbent and (2) a wires charge for customers that opt to purchase electricity from a CSP. The Commission is charged with determining wires charges, which are to be:

> [T]he sum (i) of the difference between the incumbent utilities' capped unbundled rates for generation and projected market prices for generation, as determined by the Commission, and (ii) any transition costs incurred by the incumbent electric utility determined by the Commission to be just and reasonable; however, the sum of such wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates established by the Commission and the above projected market prices for generation shall not exceed the capped rates established under § 56-582 A 1 applicable to such incumbent electric utility.[64]

The determination of a wires charge is, by far, the most contentious issue in this proceeding. Staff argues a negative wires charge must be utilized to comply with the statutory mandates set out above. If a negative wires charge is adopted by the Commission, Staff proposes the charge be reflected as a credit by the Company to the departing customer's unbundled distribution charge.

Staff proposes that, for the duration of the pilot, the Company be required to track any negative balances produced by pilot participants and carry those "credits" forward to be applied against distribution charges. However, Staff points out that in no case should AEP-VA be required to make cash payments to customers as a result of accrued negative pilot distribution charges during the Pilot Program.[65]

Staff witness Spinner points out that a negative wires charge would not apply in all instances. For residential customers, Staff was able to calculate a monthly level of kWh usage at which the pilot participant's total bill for delivery services, including the $7.00 per month customer charge, turns negative. After monthly consumption of 2,619 kWh, a pilot participant's bill for distribution services would be negative as a result of the negative wires charge for that particular month. For usage under 2,619 kWh a pilot participant's bill for distribution services would be greater than zero.[66]

---

[64]Section 56-583 A of the Code of Virginia.
[65]Ex. No. HMS-10, at 46, 47.
[66]The average use per month for an AEP-VA residential customer is 1166 kWh. As such, Staff contends the frequency of pilot participants receiving a negative monthly bill for AEP-VA power delivery service should be low. (Id. at n.18).

The Company is adamantly opposed to the concept of a negative wires charge. If the calculation of the wires charge results in a negative number, the Company contends the Commission should treat it as zero (0). Daniel Carson, president of Virginia and Tennessee American Electric Power Company and vice president of American Electric Power Company, testified that the General Assembly specifically rejected the concept of stranded benefits (a negative wires charge).[67]

The Company argues that a negative wires charge disregards the explicit intent of Section 56-583 of the Code of Virginia. First, the language of 56-583 A consistently refers to wires "charges." The Company asserts that a charge is clearly intended to mean a positive amount billed to the customer, not a credit or payment to the customer. The Company further maintains that Section 56-583 B specifically refers to payment of wires charges by customers but does not mention credits by utilities to customers. Sections 56-583 C and D also refer only to customer payment of wires charges owed to an incumbent electric utility.[68]

The Company points out that Section 56-590 C of the Code provides that Commission regulations for functionally separated generation, transmission and distribution services shall prevent cost-shifting and cross-subsidies among the separate functions. The Company argues that Staff's proposed negative wires charge would violate this principal by using generation revenues of the incumbent electric utility to offset distribution charges of departing customers. Specifically, the Company points out that Staff's approach would require AEP-VA to credit distribution customers approximately $1.40 for generation for every dollar in distribution revenues to the Company. The Company argues that Staff's negative wires charge proposal would commit the Company to make credits larger than its entire distribution revenues assuming a majority of its customers switch, which, under Staff's proposal, they would have a great incentive to do.[69]

Company witness Landon[70] describes Staff's proposal for a negative wires charge as poor economic and regulatory policy. Specifically, Dr. Landon states that negative wires charges will induce customers to switch generation suppliers for uneconomic reasons.[71] In effect, explains Dr. Landon, customers would be paid by one supplier (in this case AEP) to use the services of another supplier whose services are more expensive. Dr. Landon charges that Staff incorrectly focuses on how many customers switch generation suppliers without regard to whether they switch suppliers on an economically sound basis.[72]

Likewise, Virginia Power argues against a negative wires charge for several reasons. First, the relevant statutes consistently describe the wires charge as a "charge" not a payment or

---

[67]Ex. RDC-15, at 2-3, Tr. 238-45.
Mr. Carson was directly involved in formulating the Act and represented AEP before the subcommittees through the passage of the Act. Tr. 239.
[68]Company Brief at 5, 6.
[69]Tr. 187, 189, 309-310.
[70]John Landon, a principal and director of the Energy and Telecommunications practice of Analysis Group/Economics, an economic consulting firm, specializes in the application of economic and statistical principles to firms, industries and markets. Dr. Landon holds a Ph.D. in Economics from Cornell University.
[71]Ex. No. JHL-20, at 15-20.
[72]Id.

credit. Second, Virginia Power asserts that Staff's proposed negative wires charge would result in cross-subsidization among AEP's generation and distribution business units in violation of Section 56-590 C 1.[73] Third, Virginia Power argues that a negative wires charge would yield a perverse result, which would require AEP to pay customers not to use its generation services. Thus, customers who continue to receive bundled service receive no credit, but customers who leave the system receive credits to pay for their distribution service. Virginia Power contends this is bad policy. Further, it results in customers being "bribed" to leave the system.[74]

The wires charge described in § 56-583 of the Code of Virginia is the sum (1) of the difference between AEP's capped unbundled rates for generation and the projected market price for generation and (2) just and reasonable transition costs incurred by AEP.

In this case, the unbundled charges for transmission, ancillary services, and the applicable distribution rate are the same on both sides of the formula. The capped rates are set by the Commission during rate proceedings and, for purposes of this Pilot Program, are considered to be the rates now in effect. Thus, the only two true variables are the projected market price for generation and its complement, the wires charge.

Staff acknowledges that its negative wires charge proposal would operate to establish the Company's liability for credits to customers in advance of any collection of generation revenues in the competitive market.[75] However, Staff argues that the Company's position ignores the mandate contained in the second calculation found in Section 56-583 A that (the wires charge) plus (unbundled charge for transmission and ancillary services) plus (applicable distribution rate) plus (projected market price for generation) must be no greater than the capped rates for the incumbent electric utility.

The Virginia Supreme Court has held, "When a statute is plain and unambiguous, a court may look only to the words of the statute to determine its meaning."[76] The Supreme Court has further found, "When considering a legislative act, a court may look only to the words of the statute to determine its meaning, and when the meaning is plain, resort to rules of construction, legislative history, and extrinsic evidence is impermissible.[77] Finally, the Court has said that unless the words of the Act are " ' inherently difficult to comprehend, of doubtful import, or lacking in clarity and definiteness . . . it is not necessary to look beyond the plain language of the statute to ascertain its underlying legislative intent.' "[78]

---

[73]This argument is based on the contention that Staff's negative wires charge methodology would require AEP to credit the distribution charges of customers who leave the Company's system with the difference between AEP's unbundled generation rate and the projected market price. (Virginia Power Brief at 7).
[74]Virginia Power Brief at 8.
[75]Tr. 173, 174.
[76]*Harrison & Bates, Inc. v. Featherstone Assoc.*, 253 Va. 364, 368, 484 S.E.2d 883, 885 (1997) (citing *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985)).
[77]*Town of Blackstone v. Southside Electric Cooperative*, 256 Va. 527, 506 S.E.2d 773, 776 (1998) (citing *Harrison & Bates, Inc. v. Featherstone Assoc.*, 253 Va. At 368, 484 S.E. 2d at 885 (1997)).
[78]Id. at 369, 484 S.E.2d at 886.

I find that when Sections 56-582, 56-583 and 56-584 are read together, the intent of the General Assembly is clear. Section 56-583 has a limited purpose, to provide for recovery of positive net stranded costs, and it simply does not apply where stranded costs are negative as derived pursuant to the formula set forth in the Act. Section 56-584 of the Code of Virginia expressly provides for incumbent electric utilities to recover their just and reasonable stranded costs, to the extent they exceed zero value in total, through either the capped rates established in Section 56-582 or the wires charge established pursuant to Section 56-583 A.

The relevant statutes consistently describe the wires charge as a "charge" not a payment or credit. For example, Section 56-583 B expressly states that, "[c]ustomers . . . shall pay a wires charge." Section 56-583 C permits any customer to "pay" the wires charge on an accelerated or deferred basis. Section 56-583 D provides that a supplier of retail electric energy may "pay" any or all of the wires charge owed to an incumbent electric utility.

While the statutory language is clear and unambiguous, when it is applied to the Company's cost of generation and capped rates, it creates a mathematical conundrum. [79] First, as noted by Staff, if the projected market price is greater than unbundled generation, a negative wires charge is required in order to avoid violating the capped rate provision in Section 56-583 A.[80] On the other hand, as argued by the Company, Section 56-584 suggests that only positive stranded cost collection is contemplated with wires charges.

In summary, I find the General Assembly did not envision or provide for a negative wires charge.[81] Section 56-584 of the Code of Virginia specifically states that just and reasonable stranded costs "**[T]o the extent that they exceed zero value in total**" will be recovered through capped rates or a wires charge. A wires charge is only intended as a mechanism for the incumbent utility to recover stranded costs from departing customers. In this case, even by AEP-VA's own calculations, the Company would incur no stranded cost if customers choose a CSP. Therefore, I find that a wires charge in this case is not applicable and that this component of the formula should be set at zero.

As a consequence of not employing a negative wires charge, the sum of the unbundled charge for transmission and ancillary services, the applicable distribution rates and the projected market price exceeds the capped rates. This is not permitted by Section 56-583 of the Code of Virginia. Therefore, I find that, in order to comply with the statutory requirements of the Act, the sum of the unbundled charge for transmission and ancillary services, the applicable distribution rate, and the projected market price should be set equal to the Company's capped rate for each customer class. Admittedly, this will result in little, if any, meaningful competition, in the Company's service territory.

---

[79]The Attorney General recognizes this contradiction in the Act. However, until this statutory contradiction is remedied by the General Assembly, Consumer Counsel does not propose the implementation of negative wires charges. (Consumer Counsel Brief at 22, n.13).

[80]Ex. No. HMS-10, at 21, 22.

[81] Senate Bill No. 585, amending § 56-583 of the Code, passed by the General Assembly in its current session, states that, "No wires charge shall be less than zero." This bill has not, as of the date of this Report, been signed by the Governor.

Metering and Billing

The Company proposes that competitive metering and billing options be made available to all customers participating in the Pilot Program. The Company emphasizes that competitive metering and billing would be offered as an option, and customers would not be required to opt for the competitive service.

The ODC agrees with the Company's proposal to allow retail Pilot Program participants to obtain metering and billing services from alternative providers. However, the ODC does not agree with the Company's proposal to give Energy Services Providers ("ESPs") the exclusive right to select alternative suppliers of competitive metering and billing services.[82] ODC witness Al-Jabir testified that AEP's proposal presumes that individual customers will not have sufficient knowledge or sophistication to select the metering and billing service providers that best suit their needs.[83] ODC contends that the Company has provided no evidence to support this presumption. Further, ODC argues that AEP-VA's position is contrary to the principle of retail customer choice.

Mr. Al-Jabir proposes that customers be given the option of selecting providers of alternative metering and billing services directly from the market. They also should be able to select an alternative provider of such services as part of a bundled package of services offered through ESPs. At a minimum, Mr. Al-Jabir argues, customers in the LPS class, who possess both the knowledge and the sophistication to make such choices independently, should be permitted to exercise this range of options.[84]

Although Consumer Counsel recognizes that competitive metering and billing eventually may play a significant role in the competitive market, it may also pose unnecessary confusion and risks, especially for residential and small commercial customers. Metering and billing are essential consumer services that must be reliably performed. Unnecessary complexities or administrative errors could undermine consumer confidence. Although Consumer Counsel does not oppose competitive metering and billing for large customers during the pilot,[85] they urge deferral for residential and small commercial customers.

Consumer Counsel also objects to the Company's tariff provision requiring the ESP to arrange for the customer's receipt of metering services from a competitive Meter Service provider ("MSP").[86] This provision, argues Consumer Counsel, inappropriately injects the ESP into the business relationship between the customer and the MSP. If metering is truly to be a competitive service for residential customers in the Pilot Program, Consumer Counsel contends that customers should be able to interact directly and solely with the MSP. In summary, Consumer Counsel states that the potential benefits of allowing competitive metering and billing

[82] Ex. No. BLT-2, at 17.
[83] Ex. No. AAJ-14, at 19.
[84] Id.
[85] Consumer Counsel Brief at 31, n.15.
[86] See Ex. No. BLT-2, Attachment I at 2.

for residential and small business customers during the pilot do not appear to outweigh the potential risks, confusion, and administrative complexities for these customers.[87]

On rebuttal, the Company argues that ESPs will be more knowledgeable about the advantages of various metering and billing service offerings available in the marketplace. Company witness Lane admits the MSP and the ESP will be competing against each other to provide competitive metering to the customer. Consequently, the MSP will reasonably be expected to keep its business relationship with its customer confidential from the ESP.[88]

I find the Company should be permitted to implement its proposed metering and billing program for large commercial and industrial pilot participants with one modification. Large commercial and industrial customers should be allowed to contract for competitive metering and billing services without having to go through an ESP. Instead, these customers should be allowed to contract directly for alternative metering and billing services. I find that competitive metering and billing for residential and small commercial customers should, for the present, be deferred. These services must be reliably performed to maintain consumer confidence. Finally, the Company should track and report information to Commission Staff on competitive activity pertaining to alternative metering and billing

Reporting Requirements

In her prefiled testimony, Staff witness Jenkins proposes the Company provide several reports on a semiannual basis. The Company agreed to most of the reports with one notable exception. The Company specifically takes issue with Staff's proposal that the Company file market share information and a comparison of market offers. Ms. Jenkins explained that Staff seeks to gather information on which suppliers actually are enrolling customers and the types and number of customers being enrolled with each supplier. Staff contends the Company is the logical source for this information as it will be processing customer switches. Further, Staff promises to treat information it receives as confidential to the extent confidentiality is required.[89]

Ms. Jenkins argues the information will help Staff assess the success of the Pilot Program and determine what changes should be made before the start of competition. Staff also requests the right to seek additional information for monitoring purposes as the Pilot Program progresses.[90]

The Company considers Staff's request to be unreasonable. Mr. Laine claims that market share information is of competitive value and should be kept confidential. Further, he states that it would be burdensome for the Company to calculate and maintain such information. Mr. Laine maintains there is no reason why the Company should have information on market offers in the normal course of conducting its business. Market offers are frequently the basis for specific contract language that would be kept confidential between the service provider and the customer.

[87]Consumer Counsel Brief at 32.
[88]Tr. 353, 354.
[89]Tr. 92.
[90]Ex. No. DWJ-8, at 7.

Mr. Laine claims that providing this information would result in a breach of confidentiality.[91] Conversely, information on market offers which are made public because they are aimed at the mass markets will be readily available to the Staff through normal media channels.[92]

I find that Company should report to Staff on a semiannual basis information concerning market share kept in its normal course of business. To the extent requested by the Company, Staff will keep this information confidential. I further find that the Company should not be required to compile and report information comparing market offers that is public information or is not kept in the Company's normal course of business.

Terms and Conditions

Overall, the Company states that its Terms and Conditions will be revised to comply with the final rules adopted in Case No. PUE980812. However, there are three issues involving the Company's terms and conditions of the Pilot Program that need to be addressed here. These issues are equalized rates of return, a $5.00 switching fee, and charges for meter accuracy testing. These issues are discussed separately below.

a. Equalized Rates of Return

The development of unbundled rates was first considered in the Company's 1996 rate case, Case No. PUE960301. A number of issues were stipulated and settled in that case and the issue of the unbundling of AEP-VA's rates was transferred to Case No. PUE980814. The Company developed extensive cost of service studies and unbundled rates in terms of cents per kWh for all retail rate schedules in Case No. PUE960301. These studies form the basis for the Company's proposed unbundled rates in this proceeding.

The Company proposed that the existing inter-class subsidies should be eliminated as soon as possible. This is consistent with the Company's proposal in Case No. PUE960301 to remove existing subsidies over a three-year period.

Company witness Thomas explains that, for purposes of the Pilot Program, the inter-class subsidy is appropriately placed in the capped generation component because all customers pay for generation services. The market, according to Ms. Thomas, should ultimately determine any subsidies or discounts offered to various customer classes. Ms. Thomas prepared and offered two schedules attached to her testimony[93]which segment the settlement revenue requirement into its unbundled components.

Staff maintains that the rates[94] reflecting the settlement in Case No. PUE960301 should be used in determining Pilot Program tariffs.

[91]Ex. No. JLL-19, at 2.
[92]Id.
[93]Ex. No. LJT-6.
[94]The settlement rates are found in the testimony of Staff witness Raju. (Ex. No. EBR-9, attachment EBR-1).

I find that the settlement rates as reflected in Mr. Raju's testimony should be used to determine Pilot Program tariffs. These rates accurately reflect the settlement total and per class revenues as approved by the Commission in Case No. PUE960301, AEP-VA's last rate case. To the extent any amount of subsidy should be removed, such removal should await the Company's next rate case.

b. Switching Fee

The Company proposes to collect a $5.00 switching fee when a customer switches between two competitive service providers during the Pilot Program. The Company defines the $5.00 charge as an implementation or transition cost, but proposes to collect this charge from the individual customers creating the cost.[95]

Section 56-583 A of the Code of Virginia requires that the wires charge, the unbundled charge for transmission and ancillary services, the applicable distribution rates, and the Commission-determined projected market prices for generation cannot exceed the bundled capped rates. The Act defines capped rates as follows:

> The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission.[96]

Staff is concerned that this charge may violate the capped rates provision of the Act by causing a Pilot Program customer to pay more for service than allowed by the capped rate ceiling.[97]

There is no statutory provision for the collection of transition costs except through the wires charge. The wires charge must be developed on a class basis because the cost of generation varies among different classes of customers. It is inappropriate to charge individual customers within a class different wires charges to collect this transition cost. However, if this charge is treated as a new charge instead of a transition cost, the Staff's concern that it would violate the rate cap provision of the Act is valid.

I find the Company's proposed $5.00 switching fee should be denied during the Pilot Program. The Company, however, should collect data recording the actual Company costs to perform switching services. Company should provide this data to Staff on a semiannual basis.

---

[95] Ex. No. LJT-18, at 10; Tr. 338, 339.
[96] Section 56-582 A 3 of the Code of Virginia.
[97] Staff Brief at 27.

c. Charge for meter accuracy testing

The Company's proposed Terms and Conditions of service include a $15.00 charge for testing single phase and a $40.00 charge for testing poly phase meters when such tests are requested by the MSP. The Company's present Terms and Conditions reflect a $15.00 charge for single phase and a $30.00 charge for poly phase meter accuracy testing service when requested by the customer more frequently than once in two years.

I find the proposed new charges should be denied. These charges are applicable to similar services under the Company's current tariff. Therefore, the proposed provision for meter testing charges should remain consistent with the Company's current tariff.

Load Profiling

Staff, through Company filings and meetings with AEP officials, has determined that the Company's approach to load profiling, balancing and settlement issues during the Pilot Program is reasonable assuming it is executed skillfully and fairly.[98] However, as the Pilot Program proceeds, Staff will monitor the results of the Company's load balancing and financial settlement process. I find the Company should provide Staff with detailed information relating to its balancing and settlement procedures.

Michel A. King

Mr. King has four objections to the Company's proposed Pilot Program. First, Mr. King objects to the Company's proposal to exclude customers from the Pilot Program at locations served by special distribution facilities. Mr. King explains that the current method of recovering the Company's investment in distribution facilities is through a bundled rate for electrical service that includes a distribution charge that has been subject to the regulatory process and that applies to all customers in a given rate class. Mr. King asserts that the Company has offered no evidence that an extraordinary method of recovering its distribution costs is warranted. Further, Mr. King states the Company has failed to quantify its loss if special distribution charges are not implemented. Mr. King urges rejection of the Company's proposal to apply special distribution charges, distribution surcharges, or prepayments of otherwise amortized distribution charges to prospective Pilot Program participants at locations served by special distribution facilities.

I find Mr. King has a valid point and that the Company's proposed distribution surcharges, or prepayment of otherwise amortized distribution costs should be denied. The purpose of a class cost of service study is to determine the cost of serving each customer class. Each customer in the class pays the same rate. Of course, if the Company has a special arrangement or a separate contract with an individual customer, that contract or special arrangement should be honored. Otherwise, customers within a class should not be singled out for special charges.

---

[98]Ex. No. HMS-10, at 49.

Second, Mr. King objects to the Company's proposal to require interval meters for all Pilot Program customers with average monthly billing demands of 200 kW or greater. The cost of the interval meter is to be paid by the customer. An interval meter informs the Company, on an hourly basis, of the customer's demand and energy requirements, thereby giving the Company information for each ESP's hourly responsibility for energy and capacity.[99] Company witness Laine confirmed that the cost of an interval meter could reach $10,000.00.[100]

I find the Company should be allowed to require interval meters for all Pilot Program customers with average monthly billing demands of 200 kW or greater. First, customers in this category are large users and interval meters will provide an accurate determination of their cost of service. Second, if metering for large customers is competitive, the cost of the meter should also be restrained by competition.

Third, Mr. King proposes that language pertaining to the Company's liability for "loss, injury, or damage to persons or property caused by equipment which is not owned, installed and maintained by the Company" be changed. Specifically, Mr. King proposes changing "owned, installed and maintained" to "owned, installed or maintained." Mr. King characterizes the Company's proposed language as an "unwise release from liability."[101] Mr. King explains that, with competition, MSPs may be maintaining meters that were once owned and installed by the Company. Conversely, the Company may, upon termination of service by an MSP, be maintaining meters installed by an MSP. Mr. King requests that language used in the Pilot Program accurately reflect the Company's liability with respect to equipment that the Company does not own, install or maintain.

I find there is insufficient basis for a change in the language pertaining to liability for equipment that is not owned, installed and maintained by the Company. This proposal would increase the liability of the Company, however, the benefit of the proposed change is unclear. Therefore, I find the language should remain as proposed by the Company.

Fourth, Mr. King advocates a negative wires charge based on the rationalization that Section 56-582 of the Code of Virginia authorizes the Commission to intervene when an incumbent utility over-recovers net stranded costs. Mr. King states there is nothing in the Code that precludes a negative wires charge if necessary to prevent over-recovery of net stranded costs.[102]

I find Mr. King's premise for a negative wires charge is not supported by the applicable law. Section 56-582 of the Code of Virginia provides for rate caps to be established for customers purchasing bundled electric transmission, distribution and generation services from an incumbent electric utility. The section does not authorize the Commission to intervene if the utility over-recovers its net stranded cost. Sections 56-583 and 56-584 of the Code of Virginia, as they pertain to recovery of stranded costs, are discussed above.

---

[99]Tr. at 370.
[100]Tr. 369.
[101]King Brief at 7.
[102]Id. at 8, 9.

FINDINGS AND RECOMMENDATIONS

Based on the evidence in this case, I find that:

(1) AEP-VA's Pilot Program, as modified herein, should be adopted;

(2) Participation in Phase I of the Pilot Program should be set at a level not greater than 5% of the Company's Virginia jurisdictional customers;

(3) Consumer Counsel's proposal that Phase I of the Pilot Program be increased to 5% of annual kWh sales plus an additional 2% of the annual sales for residential and small commercial classes as a minimum set-aside for aggregated loads should be denied;

(4) ODC's proposal to increase participation limits for individual LPS customers from 15 MW to 30 MW should be denied;

(5) Participation in Phase II of the Pilot Program should remain at 10% of the Company's Virginia jurisdictional customers and commence on or about March 1, 2001;

(6) Staff's proposal for a negative wires charge should be denied;

(7) The projected market prices for generation should be determined following the methodology set forth herein;

(8) The projected market prices should be determined 90 days prior to the beginning of each phase of the Pilot Program;

(9) The projected market price should not contain adjustments related to the Company's transmission costs;

(10) Unbundled transmission rates for the Pilot Program should reflect the FERC OATT. Differences between the FERC OATT and the Company's jurisdictional unbundled transmission cost of service should not be treated as a transition cost;

(11) Competitive metering and billing services should be permitted only for large commercial and industrial customers during the Pilot Program;

(12) The Company should report information on a semiannual basis to Commission Staff regarding alternative metering and billing;

(13) The terms and conditions of the Pilot Program should be modified to comply with the rules adopted by the Commission in Case No. PUE980812;

(14) The Company should provide Staff with detailed data relating to its balancing and settlement procedures;

(15) The Company should not be required to report information to Staff regarding market offers to the extent this information is available to the general public;

(16) The Company's proposed $5.00 switching fee should be denied. The Company should compile data pertaining to the costs associated with switching customers between CSPs and report this information to Staff;

(17) The Company's charges for meter accuracy testing should remain as set forth in the Company's current tariff;

(18) Except as specifically addressed herein, the Company should report on a semi-annual basis all information requested by Staff;

(19) The Company should not be allowed to assess special distribution charges, distribution surcharges, or prepayment of otherwise amortized distribution charges absent a contract or special agreement;

(20) The Company should be allowed to require interval meters for all customers with average monthly billing demands of 200 kW or greater; and

(21) The Company's language pertaining to liability for any loss, injury, or damage to persons or property caused by equipment which is not owned, installed and maintained by the Company is reasonable.

I therefore ***RECOMMEND*** the Commission enter an order that:

(1) ***ADOPTS*** the findings of this Report;

(2) ***APPROVES*** AEP-VA's Pilot Program as modified herein; and

(3) ***DISMISSES*** this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

Howard P. Anderson, Jr.
Hearing Examiner